

# Exhibit E

**RE: Capsicum Engagement**

Barnes III, Attison <ABarnes@wiley.law>

Tue 3/17/2020 1:20 PM

**To:** Seth Carson <seth@dereksmithlaw.com>

To be clear, the depositions tomorrow and Thursday will not be canceled, but postponed. Rest assured that I am in communication with Sid Gold and his firm.

In your e-mail below, you did not respond to my proposed plan for document searching and production. Please confirm that you will get the devices searched as well as recover the storage and cloud data today and tomorrow, then get them to me by Thursday. Based on your representations this morning and Capsicum's commitment on keeping the search terms and information on the devices "attorney's eyes only," I will send the search terms in a couple minutes.

Note that I also asked for available dates and times to lock in rescheduled depositions. Later today, please also provide available dates and times for you and your clients (Lisa Barbounis, Vasili Barbounis, and Delaney Yonchek) during the 7-10 day period between 3/20 and 3/31. Please also send your available dates for rescheduled depositions of Marnie Meyer and Matt Ebert. We will then work with those witnesses. We are fine scheduling these during the weekends if that helps with availability, and we can depose Ms. Yonchek in Washington, DC if she prefers.

For the record, we disagree with any suggestion that Plaintiff has delayed. It makes no sense that we would delay the production of data we have been seeking for months.



Attison L. Barnes, III  
Attorney at Law  
[abarnes@wiley.law](mailto:abarnes@wiley.law)

Wiley Rein LLP • 1776 K Street NW • Washington, DC 20006

o: 202.719.7385

[Download V-Card](#) | [wiley.law](#) | [Bio](#)

Note: The firm's domain has changed to [wiley.law](#). To update my contact information, please download my [vCard](#)

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**From:** Seth Carson <seth@dereksmithlaw.com>  
**Sent:** Tuesday, March 17, 2020 12:45 PM  
**To:** Barnes III, Attison <ABarnes@wiley.law>  
**Subject:** Re: Capsicum Engagement

I agree that there are no depositions scheduled in this case tomorrow and that all deps are going to be rescheduled.

You might want to coordinate with your co counsel because I received subpoenas for 4 depositions scheduled tomorrow including Marnie. Meyer, Matthew Ebert, Delaney Yonchek, and Vasili Barbounis. I informed all of you that I could not do depositions last 1:00 P.M., because I had a previous appointment. So there was never a way that all the depositions were going to take place tomorrow with or without a national emergency and with or without documents being produced. I did not receive a single communication from any one letting me know they had received me email and that they would work with me in scheduling depositions. So please coordinate with Sidney Gold's office in the rescheduling of the depositions. Presently all depositions are canceled until further notice

The document speaks for itself and clearly states that the search terms are attorneys eyes only. All MEF information will be treated as attorneys eyes only. This includes Capsicum and my law firm.

As a final note: the delay in retrieving electronic information from my client's electronic devices is due to plaintiff's improper, inappropriate discovery requests. You requested a form of discovery that seemingly was invented and conceptualized for this case alone. You were unable to cite to a single precedent to support the improper discovery process that you attempted. You wanted the entire contents of every device my client ever touched to be ripped from my client's devices and forwarded to you without regard for privacy, relevance, or the proportional needs of the frivolous lawsuit that you filed. There has never been an example in the third circuit or any circuit where discovery was processed with absolutely no regard for parties rights or relevance to the case. But that did not stop you from trying. I would therefore ask that you stop accusing me and my client of delaying the discovery process in every email and common action you send me. Both my client and myself have worked diligently and in good faith to process plaintiff's discovery requests. It is not March 17, 2020 and Plaintiff still has not provided the search terms for the devices that were imaged almost a month ago.

Accordingly, please send me the search terms so that I can provide them to Capsicum and begin the search process

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**From:** Barnes III, Attison <[ABarnes@wiley.law](mailto:ABarnes@wiley.law)>  
**Sent:** Tuesday, March 17, 2020 12:18:23 PM  
**To:** Seth Carson <[seth@dereksmithlaw.com](mailto:seth@dereksmithlaw.com)>  
**Subject:** RE: Capsicum Engagement

Seth –

This document is confusing because it has a heading that refers to "Defendant's Answer with Affirmative Defenses to Plaintiff's Amended Complaint." It was not shared with me before it was signed, and while we don't agree with all of it, please confirm your understanding that it states that Capsicum agrees that all of MEF's search terms and all electronic information recovered from your client's electronic devices will be treated as attorneys' eyes only and not disclosed to anyone (including Defendant Lisa Barbounis) with the exception of your law firm (to review and supply to Plaintiff's counsel).

Because of the delay in getting an Acknowledgement from Capsicum (we were supposed to have it from you last Thursday) and because of the time you say it will take to get the devices searched and reviewed, I am concerned about the prejudice to my client if we were to proceed with the depositions tomorrow and Thursday. I haven't seen the data/metadata from these devices or from the other sources not yet in the possession of Capsicum, and I expected to receive it no later than January 6, over two months ago. The current situation is not helping matters. As a follow-up to our discussion last Wednesday, I also never received available dates and time from you by 5:00 p.m. last Thursday if you wanted to reschedule the depositions of Ms. Yoncheck and Mr. Barbounis set for tomorrow. Please let me know ASAP whether you agree with a short 7-10 day extension of the depositions previously subpoenaed or noticed, as we anticipate filing a motion with the court for clarity. That way, we can get the devices searched as well as recover the storage and cloud data today and tomorrow, get them to me by Thursday, and lock in the rescheduled deposition dates once I received the available dates from you.

Please let me know ASAP. Thank you.



Attison L. Barnes, III  
Attorney at Law  
[abarnes@wiley.law](mailto:abarnes@wiley.law)

Wiley Rein LLP • 1776 K Street NW • Washington, DC 20006

o: 202.719.7385

[Download V-Card](#) | [wiley.law](#) | [Bio](#)

Note: The firm's domain has changed to [wiley.law](#). To update my contact information, please download my [vCard](#)

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**From:** Seth Carson <[seth@dereksmithlaw.com](mailto:seth@dereksmithlaw.com)>

**Sent:** Tuesday, March 17, 2020 8:57 AM

**To:** Barnes III, Attison <[ABarnes@wiley.law](mailto:ABarnes@wiley.law)>

**Subject:** Fwd: Capsicum Engagement

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**From:** Alexi Michaels <[amichaels@capsicumpgroup.com](mailto:amichaels@capsicumpgroup.com)>

**Sent:** Tuesday, March 17, 2020 8:55:50 AM

**To:** Seth Carson <[seth@dereksmithlaw.com](mailto:seth@dereksmithlaw.com)>

**Subject:** RE: Capsicum Engagement

Please see attached for the signed agreement.

Thank you,

Alexi Michaels | **Capsicum Group, LLC** | Philadelphia

Phone: 215.222.3101 | Direct: 267.332.6578

Email: [amichaels@capsicumpgroup.com](mailto:amichaels@capsicumpgroup.com)

[www.capsicumpgroup.com](http://www.capsicumpgroup.com)

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**From:** Alexi Michaels

**Sent:** Tuesday, March 17, 2020 8:48 AM

**To:** Seth Carson <[seth@dereksmithlaw.com](mailto:seth@dereksmithlaw.com)>

**Subject:** RE: Capsicum Engagement

Okay sounds good. I'll send it over shortly!

Alexi Michaels | **Capsicum Group, LLC** | Philadelphia

Phone: 215.222.3101 | Direct: 267.332.6578

Email: [amichaels@capsicumpgroup.com](mailto:amichaels@capsicumpgroup.com)

[www.capsicumpgroup.com](http://www.capsicumpgroup.com)

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**From:** Seth Carson <[seth@dereksmithlaw.com](mailto:seth@dereksmithlaw.com)>

**Sent:** Tuesday, March 17, 2020 8:47 AM

**To:** Alexi Michaels <[amichaels@capsicumgroup.com](mailto:amichaels@capsicumgroup.com)>  
**Subject:** Re: Capsicum Engagement

I don't know if that's an issue either but I don't think it is an issue with your signing it. After you sign it I'll get you the search terms. Then you can let me know if it can be done this week. If not, I'll understand. It is a global pandemic. But let's give it a try.

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**From:** Alexi Michaels <[amichaels@capsicumgroup.com](mailto:amichaels@capsicumgroup.com)>  
**Sent:** Tuesday, March 17, 2020 8:36:30 AM  
**To:** Seth Carson <[seth@dereksmithlaw.com](mailto:seth@dereksmithlaw.com)>  
**Subject:** RE: Capsicum Engagement

Hi Seth,

I'm sorry I didn't get you a signed copy yesterday. My last day at Capsicum Group is Friday and I was going to have my boss sign it but he left early yesterday. I can sign it today and send it over but I wasn't sure if me not being here after this week will be an issue. Let me know and I'll send you over a signed copy whether it's me or Brian signing.

Thanks!

Alexi Michaels | **Capsicum Group, LLC** | Philadelphia  
Phone: 215.222.3101 | Direct: 267.332.6578  
Email: [amichaels@capsicumgroup.com](mailto:amichaels@capsicumgroup.com)  
[www.capsicumgroup.com](http://www.capsicumgroup.com)  
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**From:** Seth Carson <[seth@dereksmithlaw.com](mailto:seth@dereksmithlaw.com)>  
**Sent:** Monday, March 16, 2020 12:17 PM  
**To:** Alexi Michaels <[amichaels@capsicumgroup.com](mailto:amichaels@capsicumgroup.com)>  
**Subject:** Re: Capsicum Engagement

Alexi,

The opposing party in this case has asked that you provide a statement that confirms that no information will be shared with any parties other than Defendant, Lisa Barbounis's attorneys (Derek Smith Law Group, PLLC). So all information is attorney's eyes only. I have attached a statement to this email. Can you please sign and return to me. I need to provide this signed statement before MEF will provide the search terms.

Also, they asked if you can provide a time when the searching will be completed and the documents will be ready for me to review.

I have to review everything before it can be produced to Plaintiff in accordance with Judge Sanchez's Court Order. I believe I have provided you with the Court Order previously, but I attached it to this email as well.

Seth D. Carson, Esquire  
Derek Smith Law Group, PLLC  
1835 Market Street  
Suite 2950  
Philadelphia, PA 19103  
Phone: 215.391.4790  
Facsimile: 215.893.5288  
Direct: 484.678.2210  
Email: [Seth@DerekSmithLaw.com](mailto:Seth@DerekSmithLaw.com)

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**From:** Alexi Michaels <[amichaels@capsicumgroup.com](mailto:amichaels@capsicumgroup.com)>  
**Sent:** Wednesday, March 4, 2020 3:20 PM  
**To:** Seth Carson <[seth@dereksmithlaw.com](mailto:seth@dereksmithlaw.com)>  
**Subject:** RE: Capsicum Engagement

Hi Seth,

Thank you for paying the invoice!

Collection 20 phones, emails and cloud storage alone will be about 30,000... That is without the searching that will be done.

Just so you know, iCloud accounts are not accessible at this time. No forensic tools can collect them because of two factor authentication.

Thank you,

Alexi Michaels | **Capsicum Group, LLC** | Philadelphia  
Phone: 215.222.3101 | Direct: 267.332.6578  
Email: [amichaels@capsicumgroup.com](mailto:amichaels@capsicumgroup.com)  
[www.capsicumgroup.com](http://www.capsicumgroup.com)  
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**From:** Seth Carson <[seth@dereksmithlaw.com](mailto:seth@dereksmithlaw.com)>  
**Sent:** Wednesday, March 4, 2020 2:16 AM  
**To:** Alexi Michaels <[amichaels@capsicumgroup.com](mailto:amichaels@capsicumgroup.com)>  
**Subject:** Re: Capsicum Engagement

I paid the invoice for the imaging of the phones. I attached the payment confirmation to this email.

I still need to get you search criteria. It is coming. I am going back and forth with opposing counsel trying to agree on a few things including the search terms.

In the interim, can I ask you to please provide me with some information... The opposing party in this case with the two phones wants us to have like 20 phones, emails accounts, and cloud storage independently searched. They want to independently image all twenty accounts and devices. My argument is that a lot of the accounts are linked through the phones so they will be searching and paying for duplicative information.

If we have 20 accounts interdependently imaged and then we use the search terms to identify information that hits on those search terms and then I need the information provided to me in different formats with metadata and original cellebrite UFDR with full metadata, plus possibly PDF and excel formats:

What would this cost? I am guess it could end us costing between \$30k to \$50k. I am trying to make a cost benefit argument based on the practical consideration that we cannot afford this. So I am trying to ascertain what it would cost - ballpark.

Seth D. Carson, Esquire  
Derek Smith Law Group, PLLC  
1835 Market Street  
Suite 2950  
Philadelphia, PA 19103  
Phone: 215.391.4790  
Facsimile: 215.893.5288  
Direct: 484.678.2210  
Email: [Seth@DerekSmithLaw.com](mailto:Seth@DerekSmithLaw.com)

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**From:** Alexi Michaels <[amichaels@capsicumgroup.com](mailto:amichaels@capsicumgroup.com)>  
**Sent:** Wednesday, February 26, 2020 9:06 AM  
**To:** Seth Carson <[seth@dereksmithlaw.com](mailto:seth@dereksmithlaw.com)>  
**Subject:** RE: Capsicum Engagement

Hi Seth,

Just following up on the retainer

On the other hand. I talked to Lisa last night, she was curious when her phones will be ready. They were successfully imaged and I can ship them out this afternoon. She requested I send overnight.

Thanks!

Alexi Michaels | Capsicum Group, LLC | Philadelphia

Phone: 215.222.3101 | Direct: 267.332.6578

Email: [amichaels@capsicumgroup.com](mailto:amichaels@capsicumgroup.com)

[www.capsicumgroup.com](http://www.capsicumgroup.com)

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**From:** Alexi Michaels

**Sent:** Tuesday, February 25, 2020 1:35 PM

**To:** Seth Carson <[seth@dereksmithlaw.com](mailto:seth@dereksmithlaw.com)>

**Subject:** RE: Capsicum Engagement

Hi Seth,

There is a 5% fee when making a credit card payment. If you still want to go through with that then I will send your email address over to Lesley, who will send you a bill via PayPal and you can pay it with your credit card. Let me know.

Thanks!

Alexi Michaels | Capsicum Group, LLC | Philadelphia

Phone: 215.222.3101 | Direct: 267.332.6578

Email: [amichaels@capsicumgroup.com](mailto:amichaels@capsicumgroup.com)

[www.capsicumgroup.com](http://www.capsicumgroup.com)

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**From:** Alexi Michaels

**Sent:** Monday, February 24, 2020 6:28 PM

**To:** Seth Carson <[seth@dereksmithlaw.com](mailto:seth@dereksmithlaw.com)>

**Subject:** Re: Capsicum Engagement

Of course! I'm available all morning. So come by any time after 9. Please provide passcodes for the phones.

Sent from my iPhone

On Feb 24, 2020, at 6:25 PM, Seth Carson <[seth@dereksmithlaw.com](mailto:seth@dereksmithlaw.com)> wrote:

All that sounds good. I do have a couple questions still about the process of how the information is provided to me once it is imaged.

Can we talk tomorrow morning? I will be in early and I don't have any appointments. So anytime you are available is good for me.

Seth D. Carson, Esquire  
Derek Smith Law Group, PLLC  
1835 Market Street  
Suite 2950  
Philadelphia, PA 19103  
Phone: 215.391.4790  
Facsimile: 215.893.5288  
Direct: 484.678.2210  
Email: [Seth@DerekSmithLaw.com](mailto:Seth@DerekSmithLaw.com)

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**From:** Alexi Michaels <[amichaels@capsicumgroup.com](mailto:amichaels@capsicumgroup.com)>  
**Sent:** Monday, February 24, 2020 6:15 PM  
**To:** Seth Carson <[seth@dereksmithlaw.com](mailto:seth@dereksmithlaw.com)>  
**Subject:** RE: Capsicum Engagement

The phones are billed a minimum of two (2) hours per device. I misspoke and said that they would be \$500 (\$250/hr) each, assuming there will be no issues with the devices. The hourly rate for imaging a cellphone is actually \$275/hr which will be a minimum of \$550 per device. Upon the imaging, the searching and reporting will be billed at \$275/ hr. So the retainer will be applied against your final invoice. Depending on your search terms/reporting I don't think it will be much more than the retainer.

I can give you a call if that'll be easier?

Thanks!

Alexi Michaels | **Capsicum Group, LLC** | Philadelphia  
Phone: 215.222.3101 | Direct: 267.332.6578  
Email: [amichaels@capsicumgroup.com](mailto:amichaels@capsicumgroup.com)  
[www.capsicumgroup.com](http://www.capsicumgroup.com)  
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**From:** Seth Carson <[seth@dereksmithlaw.com](mailto:seth@dereksmithlaw.com)>  
**Sent:** Monday, February 24, 2020 5:29 PM  
**To:** Alexi Michaels <[amichaels@capsicumgroup.com](mailto:amichaels@capsicumgroup.com)>  
**Subject:** Re: Capsicum Engagement

I appreciate the information. I will have both phones by tomorrow morning.

Regarding the engagement letter, can I please clarify something?

The engagement letter makes it sound like the \$1,000.00 is a deposit upon which you will bill the hourly rate. When we spoke it sounded like you have a flat rate of \$500.00 per device for the imaging.

Can you explain this?

If there is a flat rate, what services does that provide? Is it just for the imaging, or does that also include providing the information imaged?

Seth D. Carson, Esquire  
Derek Smith Law Group, PLLC  
1835 Market Street  
Suite 2950  
Philadelphia, PA 19103  
Phone: 215.391.4790  
Facsimile: 215.893.5288  
Direct: 484.678.2210  
Email: [Seth@DerekSmithLaw.com](mailto:Seth@DerekSmithLaw.com)

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**From:** Alexi Michaels <[amichaels@capsicumgroup.com](mailto:amichaels@capsicumgroup.com)>  
**Sent:** Monday, February 24, 2020 4:30 PM  
**To:** Seth Carson <[seth@dereksmithlaw.com](mailto:seth@dereksmithlaw.com)>  
**Subject:** RE: Capsicum Engagement

Hi Seth,

Please see attached for the letter of engagement. We will need a \$1,00 retainer which you can pay by card or check. You can drop off the devices at our office anytime tomorrow (the earlier the better). I will be in at 9AM.

Thanks!

Alexi Michaels | Capsicum Group, LLC | Philadelphia  
Phone: 215.222.3101 | Direct: 267.332.6578  
Email: [amichaels@capsicumgroup.com](mailto:amichaels@capsicumgroup.com)

[www.capsicumgroup.com](http://www.capsicumgroup.com)

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**From:** Alexi Michaels  
**Sent:** Monday, February 24, 2020 3:04 PM  
**To:** Seth Carson <[seth@dereksmithlaw.com](mailto:seth@dereksmithlaw.com)>  
**Subject:** Re: Capsicum Engagement

Got it!

Sent from my iPhone

On Feb 24, 2020, at 3:01 PM, Seth Carson <[seth@dereksmithlaw.com](mailto:seth@dereksmithlaw.com)> wrote:

I just sent it. Please let me know if it was received.

Seth D. Carson, Esquire  
Derek Smith Law Group, PLLC  
1835 Market Street  
Suite 2950  
Philadelphia, PA 19103  
Phone: 215.391.4790  
Facsimile: 215.893.5288  
Direct: 484.678.2210  
Email: [Seth@DerekSmithLaw.com](mailto:Seth@DerekSmithLaw.com)

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**From:** Alexi Michaels <[amichaels@capsicumgroup.com](mailto:amichaels@capsicumgroup.com)>  
**Sent:** Monday, February 24, 2020 2:57 PM  
**To:** Seth Carson <[seth@dereksmithlaw.com](mailto:seth@dereksmithlaw.com)>  
**Subject:** Capsicum Engagement

Hi Seth,

This is Lexi from Capsicum Group. I did not get your email yet so I figured I'd email you. I'm about to go into a meeting now so once I'm out I'll run the conflict check.

One question, who will be paying for the bill, Derek Smith or your client?

Thanks!

Alexi Michaels | **Capsicum Group, LLC** | Philadelphia  
Phone: 215.222.3101 | Direct: 267.332.6578  
Email: [amichaels@capsicumgroup.com](mailto:amichaels@capsicumgroup.com)  
[www.capsicumgroup.com](http://www.capsicumgroup.com)  
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